

NOTICE OF INTENT

Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division

Motiva Enterprises Delisting Petition
(LAC 33:V.Chapter 49.Appendix E) (HW079P)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Hazardous Waste regulations, LAC 33:V.Chapter 49.Appendix E (Log #HW079P).

Motiva Enterprises LLC is petitioning to exclude from the hazardous waste regulations (delist) residual solids resulting from the thermal desorption recycling of oil-bearing secondary materials at the Norco Oil Recovery Facility in Norco, Louisiana. LAC 33:V.105.M allows a hazardous waste generator to petition the department for this kind of rulemaking when a listed hazardous waste does not meet any of the criteria that justified the original listing. Based on extensive testing, the department has determined that the nature of this material does not warrant retaining this material as a hazardous waste. The basis and rationale for this proposed rule are to grant the delisting petition based on the supporting documentation submitted by Motiva Enterprises of Norco, Louisiana.

This proposed rule meets an exception listed in R.S. 30:2019.D.(2) and R.S. 49:953.G.(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on April 24, 2003, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Attendees should report directly to the hearing location for DEQ visitor registration, instead of to the security desk in the DEQ Headquarters building. Should individuals with a disability need an accommodation in order to participate, contact Lynn Wilbanks at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by HW079P. Such comments must be received no later than May 1, 2003, at 4:30 p.m., and should be sent to Lynn Wilbanks, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to FAX (225) 765-0389 or by e-mail to lynnw@deq.state.la.us. Copies of this proposed regulation can be purchased by contacting the DEQ Records Management Section at (225) 765-0843. Check or money order is required in advance for each copy of HW079P.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4,

Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.
Assistant Secretary

Title 33
ENVIRONMENTAL QUALITY
Part V. Hazardous Waste and Hazardous Materials
Subpart 1. Department of Environmental Quality-Hazardous Waste

Chapter 49. Lists of Hazardous Wastes

Appendix E. Wastes Excluded Under LAC 33:V.105.M

Table E1 - Wastes Excluded	
Facility	Address
* * *	
[See Prior Text in DuPont Dow Elastomers LLC – Marathon Oil Co.]	
Facility	Address
Motiva Enterprises LLC	Norco, LA
Waste Description	
<p>Residual solids, at a maximum annual generation rate of 10,000 cubic yards per year (7,500 tons/year), are generated from the thermal desorption recycling of oil-bearing secondary materials resulting from petroleum processing operations, which are classified as newly generated EPA Hazardous Waste Number F037, petroleum refinery primary oil/water/solids separation sludge (effective February 8, 1999, per the updated definition promulgated on August 6, 1998, and the corrected definition dated June 8, 2000). The constituents of concern for F037 waste are listed as hexavalent chromium, lead, benzene, benzo(a)pyrene, and chrysene (see LAC 33:V.4901). Motiva must implement a testing and management program that meets the following conditions for the exclusion to be valid.</p>	
(1). Testing	
<p>Sample collection and analyses, including quality control (QC) procedures, must be performed according to methodologies described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication Number SW-846, as incorporated by reference in LAC 33:V.110.</p>	
(1)(A). Inorganic Testing	
<p>During the first 12 months of this exclusion, Motiva must collect and analyze a monthly composite sample of the residual solids. Composite samples must be composed of a minimum of two representative grab samples from each operating day during a representative week of operation. The samples must be analyzed for the constituents listed in condition (3)(A) prior to disposal of the residual solids. Motiva must report to the department the unit operating conditions and analytical data (reported in milligrams per liter) for antimony, arsenic, barium, chromium, lead, mercury, nickel, selenium, silver, vanadium, and zinc, including quality control information. If the department and Motiva concur that the analytical results obtained during the 12 monthly testing periods have been significantly below the delisting levels in condition (3)(A), then Motiva may replace the inorganic testing required in condition (1)(A) with the inorganic testing required in condition (1)(B). Condition (1)(A) shall remain effective until this concurrence is reached.</p>	

Table E1 - Wastes Excluded**(1)(B). Subsequent Inorganic Testing**

Following concurrence by the department, Motiva may substitute the following testing conditions for those in condition (1)(A). Motiva must continue to monitor operating conditions and analyze quarterly composite samples representative of normal operations. The samples must be composed of representative grab samples from each operating day during a representative week of operation, during the first month of each quarterly period. These quarterly representative composite samples must be analyzed for the constituents listed in condition (3)(A) prior to disposal of the residual solids. If delisting levels for any inorganic constituents listed in condition (3)(A) are exceeded in the quarterly sample, Motiva must re-institute testing as required in condition (1)(A). Motiva may, at its discretion, analyze composite samples gathered more frequently to demonstrate that smaller batches of waste are nonhazardous.

(1)(C). Organic Testing

During the first 12 months of this exclusion, Motiva must collect and analyze two monthly grab samples of the residual solids. These two representative grab samples should be collected on different operating days during a representative week of operation. The samples must be analyzed for the constituents listed in condition (3)(B) prior to disposal of the residual solids. Motiva must report to the department the unit operating conditions and analytical data (reported in milligrams per liter) for anthracene, benzene, toluene, xylenes, carbon disulfide, chrysene, naphthalene, and pyrene, including quality control information. If the department and Motiva concur that the analytical results obtained during the 12 monthly testing periods have been significantly below the delisting levels in condition (3)(B), then Motiva may replace the organic testing required in condition (1)(C) with the organic testing required in condition (1)(D). Condition (1)(C) shall remain effective until this concurrence is reached.

(1)(D). Subsequent Organic Testing

Following concurrence by the department, Motiva may substitute the following testing conditions for those in condition (1)(C). Motiva must continue to monitor operating conditions and analyze two annual grab samples representative of normal operations. The samples must be representative grab samples from different operating days during a representative week of operation, during the first month of each annual period. These annual representative grab samples must be analyzed for the constituents listed in condition (3)(B) prior to disposal of the residual solids. If delisting levels for any organic constituents listed in condition (3)(B) are exceeded in the annual sample, Motiva must re-institute testing as required in condition (1)(C). Motiva may, at its discretion, analyze grab samples gathered more frequently to demonstrate that smaller batches of waste are nonhazardous.

Table E1 - Wastes Excluded**(2). Waste Holding and Handling**

Motiva must store as hazardous wastes all residual solids generated until each batch has completed verification testing, as specified in conditions (1)(A) - (1)(D), and has satisfied the delisting criteria, as specified in condition (3). If the levels of constituents in the samples of residual solids are below all of the applicable levels set forth in condition (3), then the residual solids thereby become nonhazardous solid wastes and may be managed and disposed of in accordance with all applicable solid waste regulations. If hazardous constituent levels in any monthly composite or other representative sample equal or exceed any of the delisting levels set in condition (3), the residual solids generated during the corresponding period must be retreated and/or stabilized as allowed below until the residual solids meet the delisting levels, or managed and disposed of in accordance with Subtitle C of RCRA. If the residual solids contain leachable inorganic concentrations at or above the delisting levels set forth in condition (3)(A), then Motiva may stabilize the material with Type 1 portland cement and/or hydrated lime as demonstrated in the petition to immobilize the metals. Following stabilization, Motiva must repeat analyses in condition (3)(A) prior to disposal.

(3). Delisting Levels

Concentrations in conditions (3)(A) and (3)(B) must be measured in the extract from the samples by the method specified in LAC 33:V.4903.E. All leachable concentrations in the extract must be less than the following levels (all units are milligrams per liter).

(3)(A). Inorganic Constituents

Antimony - 0.50; Arsenic - 0.50; Barium - 50.0; Chromium - 0.50; Lead - 0.50; Mercury - 0.05; Nickel - 5.0; Selenium - 1.0; Silver - 0.5; Vanadium - 1.6; Zinc - 50.0.

(3)(B). Organic Constituents

Anthracene - 0.20; Benzene - 0.10; Carbon disulfide - 4.8; Chrysene - 0.05; Naphthalene - 0.05; Pyrene - 0.05; Toluene - 0.10; Xylenes - 0.10.

(4). Changes in Operating Conditions

If Motiva significantly changes the operating conditions specified in the petition, Motiva must notify the department in writing. Following receipt of written approval by the department, Motiva must re-institute the testing required in conditions (1)(A) and (1)(C) for a minimum of four months. Motiva must report unit operating conditions and test data required by conditions (1)(A) and (1)(C), including quality control data, obtained during this period no later than 60 days after the changes take place. Following written notification by the department, Motiva may replace testing conditions (1)(A) and (1)(C) with (1)(B) and (1)(D). Motiva must fulfill all other requirements in condition (1).

Table E1 - Wastes Excluded**(4)(A). Processing Equipment**

Motiva may elect to change thermal desorption processing equipment based on operational performance and economic considerations. In the event that Motiva changes operating equipment, i.e., generic thermal desorption units, Motiva must re-institute processing and initiate testing required in conditions (1)(A) and (1)(C) for a minimum of four months. Motiva must report unit operating conditions and test data required in conditions (1)(A) and (1)(C), including quality control data, obtained during this period, no later than 60 days after the changes take place. Following written notification by the department, Motiva may replace testing conditions (1)(A) and (1)(C) with (1)(B) and (1)(D). Motiva must fulfill all other requirements in condition (1).

(4)(B). Batch Processing

Motiva may periodically elect to change operating conditions to accommodate batch processing of single-event waste generations. In the event that Motiva initiates batch processing and changes the operating conditions established under condition (1), Motiva must re-institute the testing required in conditions (1)(A) and (1)(C) during such batch processing events, monitor unit operating conditions, and perform testing required by conditions (1)(A) and (1)(C), as appropriate. Following the completion of batch processing operations, Motiva must return to the operating conditions applicable prior to initiation of the batch processing and may return to the testing conditions that were applicable prior to the initiation of the batch processing activities.

(5). Data Submittal

Motiva must notify the department, in writing, at least two weeks prior to initiating condition (1)(A). All data obtained to fulfill condition (1) must be submitted to the Assistant Secretary of the Office of Environmental Services, LDEQ, 7290 Bluebonnet Blvd, Baton Rouge, LA 70810, within 60 days after each sampling event. Records of operating conditions and analytical data from condition (1) must be compiled, summarized, and maintained on-site for a minimum of three years. These records and data must be furnished upon request by the department and made available for inspection. Failure to submit the required data within the specified time period or failure to maintain the required records on-site for the specified time shall be considered by the department, at its discretion, sufficient basis to revoke the exclusion. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted.

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. In the event that any of this information is determined by the department, in its sole discretion, to be false, inaccurate, or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had been in effect, or to the extent directed by the department, and that the company will be liable for any actions taken in contravention of the company's environmental obligations under the Louisiana Environmental Quality Act premised upon the company's reliance on the void exclusion."

Table E1 - Wastes Excluded**(6). Reopener Language**

If, at any time after disposal of the delisted waste, Motiva possesses or is otherwise made aware of any environmental data (including but not limited to, leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in the delisting verification testing is at a level higher than the delisting level allowed by the department in granting the petition, Motiva must report the data, in writing, to the department within 10 days of first possessing or being made aware of that data. If the testing of the waste, as required by condition (1), does not meet the delisting requirements of condition (3), Motiva must report the data, in writing, to the department within 10 days of first possessing or being made aware of that data. Based on the information described herein and any other information received from any source, the department will make a preliminary determination as to whether the reported information requires that the department take action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. If the department determines that the reported information does require departmental action, the department will notify the facility, in writing, of the action believed necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing Motiva with an opportunity to present information as to why the proposed action is not necessary. Motiva shall have 10 days from the date of the department's notice to present such information. Following the receipt of information from Motiva, or if no such information is received within 10 days, the department will issue a final written determination describing the departmental actions that are necessary to protect human health or the environment. Any required action described in the department's determination shall become effective immediately, unless the department provides otherwise.

(7). Notification Requirements

Motiva must provide a one-time written notification to any state regulatory agency in a state to which or through which the delisted waste described above will be transported, at least 60 days prior to the commencement of such activities. Failure to provide notification will result in a violation of the delisting conditions and a possible revocation of the decision to delist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality LR 20:1000 (September 1994), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:944 (September 1995), LR 22:830 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:952 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2397 (December 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2509 (November 2000), LR 29:

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**LOG #: HW079P

Person

Preparing

Statement: Judith A. SchuermanDept.: Environmental QualityPhone: (225) 765-0902Office: Environmental Assessment

Return

Address: 7290 Bluebonnet Blvd.
Baton Rouge, LA 70810

Rule

Title: Motiva Enterprises LLC Delisting
(LAC 33:V.Chapter 49, Appendix E)

Date Rule

Takes Effect: Upon Promulgation**SUMMARY**

(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Motiva Enterprises LLC is requesting delisting of its residual solids. Approving or disapproving this delisting will not affect state agency staffing levels. There are no costs or savings associated with implementation of this rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The state will collect \$1,923/yr more in industrial waste tonnage fee revenue when the residual solids are delisted. Current hazardous waste disposal is at Waste Management's facility in Emelle, AL. Since disposal is out of state, there is no state revenue currently generated. When the delisting is approved, the solid waste may be disposed in a local solid waste landfill.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

Motiva Enterprises LLC will pay \$1,923 per year more in industrial waste tonnage fees. Motiva Enterprises LLC and Shell Chemical (co-located at the Norco East Site) will have a net estimated saving of approximately \$295,000 per year for costs related to transportation and disposal. The analytical laboratory employed by Motiva will eventually experience a decrease in income of approximately \$12,500 per year. The delisting of these residual solids will not relieve the company from any liability for these wastes under federal or state law.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The economic benefits of the delisting will help assure competitive pricing and, thereby, continued employment associated with this oil recovery operation.

Signature of Agency Head or Designee

LEGISLATIVE FISCAL OFFICER OR
DESIGNEE

James H. Brent, Ph.D., Assistant Secretary
Typed Name and Title of Agency Head or Designee

Date of Signature
LFO 7/1/94

Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

The following information is requested in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

Motiva Enterprises LLC is petitioning to exclude from the hazardous waste regulations (delist) residual solids resulting from the thermal desorption recycling of oil-bearing secondary materials at the Norco Oil Recovery Facility (NORF) in Norco, LA.

- B. Summarize the circumstances which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

LAC 33:V.105.M allows a hazardous waste generator to petition the department for this kind of rulemaking when a listed hazardous waste does not meet any of the criteria that justified the original listing. Based on extensive testing, the department has determined that the nature of this material does not warrant retaining this material as a hazardous waste.

- C. Compliance with Act II of the 1986 First Extraordinary Session
(1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

The proposed rule will not result in any increase in the expenditure of funds.

- 2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

- (a) _____ Yes. If yes, attach documentation.
(b) _____ No. If no, provide justification as to why this rule change should be published at this time.

This is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT**WORKSHEET****I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED**

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

COSTS	FY 03-04	FY 04-05	FY 05-06
PERSONAL SERVICES			
OPERATING EXPENSES			
PROFESSIONAL SERVICES			
OTHER CHARGES			
EQUIPMENT			
TOTAL	0	0	0
MAJOR REPAIR & CONSTR.			
POSITIONS (#)			

No costs or savings to state agencies will result from this proposed action.

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

Approving or disapproving this delisting will not affect state agency staffing levels. There are no costs or savings associated with implementation of this rule.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY 03-04	FY 04-05	FY 05-06
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
DEDICATED			
FEDERAL FUNDS			
OTHER (Specify)			
TOTAL	0	0	0

No funds are needed to implement this rule.

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

No funds are needed to implement this rule.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

There is no anticipated impact of the proposed action on local government units.

2. Indicate the sources of funding of the local governmental unit which will be affected by these costs or savings.

This is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT**WORKSHEET****II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS**

- A. What increase (decrease) in revenues can be anticipated from the proposed action?

REVENUE INCREASE/DECREASE	FY 03-04	FY 04-05	FY 05-06
STATE GENERAL FUND			
AGENCY SELF-GENERATED	\$1,923	\$1,923	\$1,923
RESTRICTED FUNDS*			
FEDERAL FUNDS			
LOCAL FUNDS			
TOTAL			

*Specify the particular fund being impacted.

Currently, hazardous waste is disposed at Waste Management's facility in Emelle, AL. Since disposal is out of state, there is no state revenue currently generated. When the delisting is approved, the solid waste may be disposed in a local solid waste landfill.

- B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

Delisting the residual solids means the waste will no longer be regulated as hazardous and, therefore, can be disposed as industrial solid waste. An average of 2,671 tons per year at \$0.72 per ton will generate \$1,923 per year in new revenue as tonnage fees to the department for industrial waste disposed in a Type I landfill.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

- A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

Motiva Enterprises and Shell Chemical (co-located at the Norco East Site) will have a net estimated saving of approximately \$295,000 per year for costs related to transportation and disposal. Of the 2671 tones, 65% (1736 tons of ash) results from thermal desorption recycling of oily process materials generated at Shell and Motiva. (The other 35% is generated from various sources.) The shorter transportation distance results in a \$53 per ton savings, and disposal of a solid waste is \$117 per ton less than a hazardous waste. Also, analytical laboratory costs, which are currently \$22,500 per

year, should eventually decrease to about \$10,000 per year as performance demonstration enables frequency of testing to decrease.

$$(2671 \text{ tons/yr})(0.65)(\$53/\text{ton} + \$117/\text{ton}) = \$295,000/\text{yr}$$

- B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

Income at the local landfill will increase based on the rate charged to Motiva per ton of waste disposed. The analytical laboratory employed by Motiva will eventually experience a decrease in income, based on the lower volume of samples being analyzed for Motiva.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

The effects on competition and employment are considered positive. Transportation of the delisted material will be shorter (less trucking distance), but the facility operations will remain unchanged. The economic benefits of the delisting will help assure competitive pricing and, thereby, continued employment associated with this oil recovery operation.